**42 U.S.C. §1983 – FOURTH AMENDMENT**

**District of Columbia v. Wesby, --- U.S. -- (2018)**
**Decided January 22, 2018**

**FACTS:** On March 16, 2008, members of the District of Columbia Metropolitan PD responded to a complaint of loud music and illegal activities at a vacant home. One of those calling was a respected neighborhood representative. Upon arrival, neighbors confirmed the house was supposed to be empty. When officers knocked, a man looked out a window near the door and dashed upstairs. Another partygoer opened the door, admitting the officers. The officers could observe that the house looked like a vacant property, and they smelled marijuana and saw alcoholic beverages. The house did have electricity and working plumbing, but no furniture in sight beyond a few metal chairs. During the investigation, they discovered there was food in the refrigerator and toiletries in the bathroom.

Among the activities going on downstairs was a "makeshift" strip performance, with scantily-clad women dancing and receiving cash. Upstairs, officers found a mattress on the floor, the only one in the house, and used condom wrappers scattered about. One partygoer was hiding in the closet and another had locked himself in the bathroom. A total of 21 people were in the house. Upon being questioned, those individuals gave neither a clear nor a consistent story of what was going on – but several claimed a woman was "renting the house" and had given them permission to be there. The woman was identified only by a nickname (Peaches) and was not present. They were able to reach her on the phone but she said she'd left to go to the store and would not return as she feared being arrested. She also gave an unclear explanation as to her rights to the house, and hung up. After a second and then third call, she finally admitted she did not have permission to be there.

Officers were able to reach the property owner, who stated that he had not finalized any arrangements with the women and that no one had permission to be there, let alone to be having a party there. All of the individuals were arrested, originally for unlawful entry, but the charges were amended to disorderly conduct. Ultimately, even those the charges were dropped.

16 of the 21 partygoers filed suit, under 42 U.S.C. §1983, claiming false arrest under the Fourth Amendment. The District Court ruled in favor of the 16 partygoers. The D.C. Circuit upheld that decision. The City and the officers petitioned for certiorari and the U.S. Supreme Court granted review.

**ISSUE:** May officers be held liable for making an arrest upon reasonable facts that a crime is being committed, even if it is later determined that arrest was incorrect?

**HOLDING:** Yes

**DISCUSSION:** The Court began, noting that "a warrantless arrest is reasonable if the officer has probable cause to believe that the suspect committed a crime in the officer's presence."[1] To determine probable cause, the Court agreed it must look at the events that led up to the arrest and determine if "viewed from the standpoint of an objectively reasonable police officer," probable cause was satisfied.

The Court detailed the facts known to the officers. They had been told by several credible neighbors that the house was vacant. The house was essentially bare. The utilities were on but that wasn't unusual if the house was vacant for only a short time or due to be rented soon. There was nothing inside, such as boxes, to indicate anyone was moving into the house. Looking at the conduct of the partygoers, several of whom fled upon the arrival of the officers, it was reasonable for the officers to make "common-sense conclusions about human behavior." Homeowners, as a rule, do not "live in near-barren houses," allow their homes to be used as strip clubs and leave their homes in a filthy condition. As such, it was reasonable to infer that the partygoers knew that their presence there was unauthorized, especially since "many scattered" when the officers arrived. "Unprovoked flight" is, it agreed, a strong indication of wrongdoing.[2] When questioned, the partygoers gave "vague and implausible responses," as well, with only two claiming they were invited specifically by Peaches, whom they knew only by her nickname, and they were "working the party instead of attending it." None of the actual partygoers knew the name of the supposed "hostess" and some claimed it was a bachelor party – but no bachelor was identified. When they spoke to Peaches, she was "nervous, agitated and evasive" and ultimately she admitted she had lied about her right to be there.

Viewed as a whole, it was certainly reasonable, the Court decided, for an officer "to conclude that there was probable cause to believe the partygoers knew they did not have permission to be in the house." The lower courts, the Court noted, "engaged in an 'excessively technical discussion' of the factors supporting probable cause." Those courts took the facts in isolation, rather than looking at the totality of the circumstances. Court precedent recognized "that the whole is often greater than the sum of its parts – especially when the parts are viewed in isolation."[3] Although the facts, each standing alone, could be said to not satisfy probable cause, the requirement to look at the totality "precludes this sort of divide-and-conquer analysis." Even though most of the actions were "innocent," the Court noted that officers were not required to accept it in the light of a "substantial chance of criminal activity."

The Court reversed the D.C. Circuit, and held that the officers did have probable cause to make the arrests. As such, the District and the officers were entitled to summary judgement. Although that was sufficient to resolve the matter, the Court elected to take another step, to specifically address the error "on both the merits of the constitutional claim and the question of qualified immunity." The Court elected to do so because the appellate court's analysis, if followed elsewhere, might undermine similar cases involving qualified immunity.

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[1] Atwater v. City of Lago Vista, 532 U.S. 318 (2001).
[2] Illinois v. Wardlow, 528 U.S. 119 (2000).
[3] U.S. v. Arvizu, 534 U.S. 266 (2002).

The Court noted that officers are entitled to qualified immunity unless they violated a federal statutory or constitutional right and the unlawfulness of the actions they took was "clearly established at the time."[4] That is a high standard and requires that the law on an issue was sufficiently clear that an officer would understand the unlawfulness of their conduct. The underlying legal principle must be "settled law"[5] and such that every reasonable official would know. "The rule's contours must be so well defined that it is 'clear to a reasonable officer that his conduct was unlawful in the situation he confronted."[6] It must be highly specific, not general.[7] Specificity is "especially important in the Fourth Amendment context."[8] "Given the imprecise nature, officers will often find it difficult to know how the general standard of probable cause applies in 'the precise situation encountered."[9] It is necessary, therefore "to identify a case where an officer acting under similar circumstances … was held to have violated the Fourth Amendment.[10] It requires, in most cases, a "body of relevant case law."

In this situation, the Court agreed, the circumstances made it reasonable for the officers to make the arrests, as they had probable cause, even if the officers were possibly mistaken. There was certainly no settled law to the contrary. Nothing required the officers to accept without question the assertions of the partygoers, and precendent agreed that "officers are not required to take a suspect's innocent explanation at face value." Looking at the "entire legal landscape," the officers reasonably had probable cause.

The D.C. Circuit was reversed and the case was remanded.

FULL TEXT OF DECISION: https://www.supremecourt.gov/opinions/17pdf/15-1485_new_8n59.pdf

[4] Reichle v. Howards, 566 U.S. --- (2012).
[5] Hunter v. Bryant, 502 U.S. 224 (1991).
[6] Saucier v. Katz, 533 U.S. 194 (2001).
[7] Plumhoff v. Rickard, 572 U.S. --- (2014)
[8] Mullenix v. Luna, 577 U.S. --- (2015).
[9] Ziglar v. Abbasi, 582 U.S. --- (2017).
[10] White v. Pauly, 580 U.S. --- (2017).